



August 12, 1999

Ms. Helen K. Bright  
Office of General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701

OR99-2306

Dear Ms. Bright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126386.

The University of Texas at Austin and The University of Texas System ("UT") received requests for the "cookie files" of certain UT officers, staff and agents. You have supplied to this office for review, a representative sample of the responsive information.<sup>1</sup> You contend that the requested information is not "public information" subject to the disclosure requirements of chapter 552 of the Government Code. You argue in the alternative that this information is excepted from disclosure by sections 552.101, 552.107, and 552.117 of the Government Code.<sup>2</sup> We have considered the contention and exceptions you argue and have reviewed the submitted information.

We first address your contention that "cookie files" are a type of information that is not subject to chapter 552 of the Government Code. Section 552.002 of the Government Code provides the relevant definition. In pertinent part, it reads:

"Public information" means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body . . .

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>2</sup>You also raise section 552.110, but as you provide no argument in support of this exception, it shall not be addressed. See Gov't Code §§ 552.301, 552.302.

It is undisputed that the subject information is maintained on computers owned by UT. As the maintenance of these computers is clearly "in connection with the transaction of official business," we conclude that the information stored in these computers is similarly maintained, and therefore public. You rely on Open Records Decision No. 581 (1990) in support of your contention that the subject files fall outside the statutory definition.

In Open Records Decision No. 581, this office held that requested source code and documentation need not be disclosed, because it was "information that has no other significance than its use as a tool for the maintenance, manipulation or protection of public property [and was therefore] not the kind of information made public [by statute]." Open Records Decision No. 581 at 6 (1990). That decision then clarified the distinction between instructions used by computers to store information and the actual information stored, stating, "[o]f course, the information maintained within computer information systems is subject to public disclosure unless excepted [by law]." *Id* at 7.

Here, the subject information is not source code; documentation; or a tool used to maintain, manipulate or protect public property. The UT cookie file information exists on UT computers used by UT employees. It is information that documents the use of state property by state employees. It is electronically stored information subject to the disclosure requirements of Chapter 552 of the Government Code. *See* Gov't Code 552.002(b)(3).

You contend that release of the subject information implicates the First Amendment privacy rights of UT employees, citing *Sinclair v. United States*, 279 U.S. 263 (1929). Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. However, we do not believe that the *dicta* in *Sinclair* to which you refer can be construed as a holding that a constitutional right of privacy prohibits disclosure of information of the type requested.

The section 552.101 exception also encompasses the common-law right to privacy. You assert that the subject information includes UT employee personal and financial information. A governmental body may withhold information as protected by common-law privacy if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Personal financial information not related to transactions with a governmental body is generally protected by a common-law right of privacy. *See* Open Records Decision Nos. 545 (1990), 523 (1989). However, you have not indicated any specific information which you contend is confidential and our review of the information reveals no such information. The files may not be withheld under section 552.101 of the Government Code.

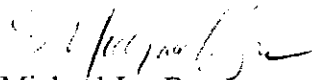
You also relate that the cookie files may contain names and addresses of UT employees. Names of government employees are public information. Gov't Code §552.022(3). You have asserted no exception for the release of this information. Release of addresses of

government employees is controlled by section 552.117 of the Government Code, which excepts from required public disclosure public employees' home addresses, home telephone numbers, social security numbers, and information revealing if an employee has family members, for employees that request that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989). You have not identified any specific portion of the responsive information that you contend contains such information subject to section 552.117 of the Government Code, and our review of these materials does not reveal any such information. The files may not be withheld under section 552.117 of the Government Code.

You relate that some of the cookie files reflect the research sites accessed by UT attorneys. You contend that revealing those sites would divulge attorney work product. Attorney work-product may be protected by section 552.111 of the Government Code. A governmental body may withhold attorney work product from disclosure if it demonstrates that the material was (1) created for trial or in anticipation of civil litigation, and (2) consists of or tends to reveal an attorney's mental processes, conclusions and legal theories. Open Records Decision No. 647 (1996). You have not demonstrated that the subject information meets this test. Therefore, none of the subject information may be withheld as attorney work product.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/ch

Ref: ID# 126386

Encl. Submitted documents

cc: Mr. Stephen N. Lisson  
Initiate !!  
P.O. Box 2013  
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(w/o enclosures)